

Juvenile Law Case Summaries

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[2002 Case Summaries](#) [2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

Certification investigation was complete and evidence was sufficient for transfer to criminal court [Price v. State] (03-3-04).

On May 30, 2002, the Dallas Court of Appeals held that the certification investigation complied with the statutory requirement of completeness and that the evidence was sufficient to support transfer to criminal court; however, the Court of Appeals ordered credit on the prison sentence for time spent in juvenile detention.

02-3-04. Price v. State, UNPUBLISHED, No. 05-01-00854-CR, 2001 WL 1131077, 2001 Tex.App.Lexis ____ (Tex.App.-Dallas 5/30/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant appeals the juvenile court's waiver of jurisdiction and transfer to district court with his appeal of his conviction for aggravated sexual assault. Appellant brings forth sixteen points of error. Appellant generally complains (1) the juvenile court erred in waiving jurisdiction and transferring his case to district court; (2) he was denied effective assistance of counsel during the juvenile transfer hearing and criminal trial, including punishment; and (3) the judgment erroneously denies appellant credit for time served. We affirm the juvenile court's transfer of jurisdiction, reform the trial court's judgment to reflect credit for time served, and affirm the trial court's judgment as reformed.

On April 9, 2000, Mr. Grimaldo walked to the corner convenience store, while Mrs. Grimaldo and their daughter remained at their apartment. On his way back to the apartment, two men, appellant and his accomplice, Kendrick Tatum, approached Mr. Grimaldo and struck him in the stomach. Appellant pulled a gun and demanded Mr. Grimaldo give appellant his money. After taking Mr. Grimaldo's money the two assailants forced Mr. Grimaldo back to his apartment. When Mr. Grimaldo attempted to open the door of the apartment, Mrs. Grimaldo heard the knob rattling inside. Mrs. Grimaldo opened the door to find her husband held at gunpoint by appellant and Tatum.

Appellant and Tatum entered the apartment, forced Mr. Grimaldo into a corner in the living room and began searching for money. While the men were searching the apartment, the Grimaldo's daughter, who was in the bathroom, began crying and yelling. Appellant forced Mr. Grimaldo into the bathroom with instructions to calm his daughter. Simultaneously, appellant ordered Mrs. Grimaldo to strip and lie on the bed. While Tatum held the gun at the bathroom door, appellant sexually assaulted Mrs. Grimaldo twice. After he finished assaulting Mrs. Grimaldo, appellant wiped himself with a towel and told Tatum that "it was his turn." Appellant then held the gun while Tatum sexually assaulted Mrs. Grimaldo. Following the assault, appellant ordered Mrs. Grimaldo into the closet to dress while appellant and Tatum left. Mr. and Mrs. Grimaldo immediately left the apartment, drove to a relative's house and called the police. Mrs. Grimaldo was taken to Parkland Hospital for a rape examination. Mr. Grimaldo returned to the apartment with the police to allow them to investigate. Mrs. Grimaldo never returned to the apartment.

Held: Affirmed as reformed.

Opinion Text: Juvenile Waiver and Transfer

Appellant first complains of the juvenile court's waiver of jurisdiction and transfer of this case to district court. Appellant complains the juvenile court failed to conduct a full investigation, erroneously permitted the admission of (1) the testimony of the investigating detective and a probation officer, and (2) appellant's involuntary statement. Appellant also contends that the evidence is factually insufficient to support the juvenile court's waiver of jurisdiction and transfer. Finally, appellant complains the juvenile court's failure to determine the voluntariness of his statement, and waiver of jurisdiction and transfer to district court denied him his constitutional right to due process. The State argues that the juvenile court correctly waived its jurisdiction and transferred appellant's case to district court and that appellant's due process arguments are without merit.

Investigation

Appellant argues that the juvenile court failed to conduct a full investigation prior to its waiver of jurisdiction, because the investigator did not perform an independent investigation of the circumstances surrounding the offense or consider appellant's version of the facts. The State argues the investigation was a full and complete investigation. For the reasons that follow, we agree with the State.

Texas Family Code section 54.02(d) requires that prior to a transfer hearing, the juvenile court "order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense." Tex. Fam.Code Ann. § 54.02(d) (Vernon Supp.2002). When a juvenile tests the fullness of an investigation, the initial determination of completeness is one made by the court that ordered it. [FN1] *Turner v. State*, 796 S.W.2d 492, 497 (Tex.App.-Dallas 1990, no writ) (citing *In re I.B.*, 619 S.W.2d 584, 586 (Tex.Civ.App.-Amarillo 1981, no writ)). The juvenile court's determination on the completeness of an investigation will not be reversed absent a clear abuse of discretion. *In re C.C.*, 930 S.W.2d 929, 934 (Tex.App.-Austin 1996, no writ).

FN1. During the juvenile transfer hearing, the State sought admission of both the social and psychological reports. The juvenile court inquired whether appellant's counsel had any objection and he responded "no objection, your honor." While we question whether appellant has preserved error on this point by affirmatively waiving any objection and failing to contest the completeness of the investigation, in the interests of justice, we address appellant's complaint.

The record demonstrates that a copy of the psychological evaluation and diagnostic study ordered by the juvenile court was filed on May 19, 2000. The psychological evaluation and diagnostic study contained information about appellant's family history, living arrangements, peer associations, educational background, academic capabilities, drug usage, and mental status. The court-ordered social evaluation was filed with the juvenile court on May 22, 2000. The social evaluation prepared by appellant's probation officer contained detailed information about appellant's previous referrals to the juvenile department and court orders resulting therefrom, the circumstances surrounding the alleged offense, appellant's general attitude, family and school history, employment status, religion, hobbies, levels of sophistication and maturity, and appellant's behavior while in detention prior to the transfer hearing. The probation officer who prepared the social evaluation testified that, in preparing the report, she reviewed not only the victim's statements and the prosecutor's report, but also appellant's statement. There was extensive testimony during the transfer hearing as to the unavailability of juvenile department resources for the supervision and rehabilitation of appellant. Appellant presented the testimony of his church pastor and various letters of recommendation.

Based upon the record before us, we conclude the juvenile court conducted a full investigation of the facts and circumstances surrounding appellant and the alleged offense. We overrule appellant's first point of error.

Admission of Evidence

In his third and fifth points of error, appellant argues the juvenile court erred in admitting hearsay testimony of the investigating detective and appellant's statement. In particular, appellant complains the juvenile court erroneously permitted the investigating officer to testify regarding the complainant's statements about the alleged offenses. Moreover, appellant complains the juvenile court failed to consider whether appellant's statement met the requirements of Texas Family Code section 51.095. We cannot agree that the juvenile court erred.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tex.R. Evid. 801(d). A juvenile transfer proceeding is not to determine the juvenile's guilt or innocence; rather, it is to determine whether probable cause exists to believe that the child committed the offense and that because of the seriousness of the offense, society's and the juvenile's best interests would best be served by transferring the juvenile to district court. *In re Honsaker*, 539 S.W.2d 198, 201 (Tex.Civ.App.-Dallas 1976, writ ref'd n.r.e.); Tex. Fam.Code Ann. § 54.02(a)(3) (Vernon Supp.2001).

Here, the trial court admitted the testimony of the investigating detective, Colleen Shinn, regarding the statements made by the victims. The detective's testimony was admissible to show only that the statements were made by the victims to meet the State's burden of showing probable cause exists to believe the child committed the offense. See *Honsaker*, 539 S.W.2d at 201. The statements were not admitted for the truth of the matter asserted therein; therefore, they were not hearsay. See Tex.R. Evid. 801(d).

Moreover, the juvenile court is permitted to consider hearsay evidence in making its determination. See *In re E.D.M.*, 916 S.W.2d 9, 11 (Tex.App.- Houston [1st Dist.] 1995, no writ). The procedural constraints generally applicable in adjudicatory proceedings are relaxed in a juvenile transfer hearing. See *id.* Thus, admission of the statements was not error. Appellant's third point of error is overruled.

Appellant additionally complains of the admission of his own statement. To present a complaint for appellate review, the record must first show that the complaint was presented to the trial court by a timely and specific objection. Tex.R.App. P. 33.1(a)(1). Moreover,

the complaining party must obtain a ruling from the trial court on the objection or object to the trial court's refusal to rule on the objection. Tex.R.App. P. 33.1(a)(2).

During the juvenile transfer hearing, appellant's counsel objected "on the contents of the statement made by my client. There is a motion to suppress any statement made by my client." The juvenile court judge responded, "I haven't had a hearing on any Motion to Suppress. But since this isn't an adjudication hearing, we will deal with that in the event that--it's not really a proper motion for this type of hearing." Appellant's counsel then responded, "Thank you, Your Honor." The record reveals that appellant failed to obtain a ruling on his objection or object to the juvenile court's failure to rule; therefore, appellant's fifth point of error is not preserved for our review. See *In re S.B.C.*, 805 S.W.2d 1, 10 (Tex.App.-Tyler 1991, writ denied). Accordingly, appellant's fifth point of error is overruled.

Factual Sufficiency

Appellant complains that the evidence is factually insufficient to support the juvenile court's waiver of jurisdiction and transfer to district court. Before addressing appellant's complaint, we must first determine the appropriate standard to review the juvenile court's order. Appellant asserts that we should apply the standard applicable to factual sufficiency in criminal matters. See *Clewis v. State*, 922 S.W.2d 126, 129 (Tex.Crim.App.1996). However, the State argues that absent an abuse of discretion, this court should not disturb the juvenile court's ruling. See *In re D.D.*, 938 S.W.2d 172, 175 (Tex.App.-Fort Worth 1996, no writ).

Prior to 1995, section 56.01(c)(1)(A) of the family code governed a juvenile's right to appeal a juvenile court's order transferring the juvenile to district court. See Act of May 23, 1991, 72nd Leg., R.S., ch. 680, § 1, 1991 Tex. Gen. Laws 2466, 2466. Under section 56.01(c)(1)(A) any appeal of a transfer order was to be taken to the court of appeals with possible further review by the Supreme Court. See *id.* The requirement governing an appeal of the transfer order was "as in civil cases generally." Tex. Fam.Code Ann. § 56.01(b) (Vernon 1996). Accordingly, legal and factual sufficiency review was performed under the standards applicable to civil cases generally. See e.g. *In re CC*, 930 S.W.2d at 932-33.

After the legislature amended the family code and code of criminal procedure in 1995, an appeal was to be taken only in conjunction with an appeal of the conviction of the offense for which a juvenile was transferred. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 48, 1995 Tex. Gen. Laws 2517, 2584. The 1995 legislative change in the law applies to conduct occurring on or after January 1, 1996. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106(a), 1995 Tex. Gen. Laws 2517, 2591.

Under article 44.47(c), appeal of a discretionary transfer order is a criminal matter, governed by the code of criminal procedure and the rules of appellate procedure applicable to criminal cases. Tex.Code Crim. Proc. Ann. art. 44.47(c) (Vernon Supp.2002). We assume, without deciding this issue, that out of an abundance of caution the factual sufficiency review applicable to criminal cases applies to our review of the juvenile court's discretionary transfer order. Therefore, when considering appellant's factual sufficiency arguments, we determine whether the trial court's findings are so contrary to the overwhelming weight of the evidence as to be clearly wrong and patently unjust. See *Clewis*, 922 S.W.2d at 133.

A juvenile court may waive its jurisdiction and transfer a juvenile to the appropriate district court, or criminal district court if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:
 - (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or
 - (B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

Tex. Fam.Code Ann. § 54.02(a) (Vernon Supp.2002). In making the determination whether to transfer the juvenile to district court, among other things, the juvenile court shall consider:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Tex. Fam.Code Ann. § 54.02(f) (Vernon Supp.2002).

Here, the juvenile court set forth an extensive list of findings of fact, which establish that the judge appropriately considered the factors enunciated in section 54.02(a) and (f). Appellant argues that the unreliable hearsay evidence, coupled with the other evidence presented, is factually insufficient to establish probable cause that the appellant was the aggressor of this offense in the manner alleged or that the welfare of the community required transfer to district court. We cannot agree.

At the juvenile transfer hearing, the State presented sufficient evidence to support the trial court's determination of probable cause. Mrs. Grimaldo identified appellant as one of the two assailants from the attack, and appellant admitted his participation in the robbery.

Additionally, the evidence is factually sufficient to establish that the welfare of the community required appellant's transfer to district court. Detective Shinn testified that the offenses for which appellant was being detained were against both property and person. Moreover, appellant assaulted Mrs. Grimaldo while her eight year old daughter and husband were in close proximity in the bathroom. Additionally, detective Shinn testified that appellant committed the crimes using a firearm. The probation officer assigned to appellant testified and reported that appellant was of above average sophistication and maturity for his age, held gang membership, associated with peers of an older age, and the nature of the crime alleged escalated in severity from previous crimes. The probation officer further testified and reported that although the appellant apparently suffers from a learning disability, he knows the difference between right and wrong. The social evaluation submitted by the probation officer reported that appellant was referred to the Dallas County Juvenile Department on several previous occasions for possession of marijuana at school, evading arrest, and theft. Appellant was alleged to have committed the current offense while under Pre-Adjudicated Intensive Supervision. Finally, the probation officer testified that it was not likely that appellant would benefit from rehabilitative efforts and that the juvenile department did not possess adequate facilities to provide the protection of the public necessary in this case. Based upon the foregoing facts, we conclude the evidence is factually sufficient to support the juvenile court's waiver of jurisdiction and transfer to district court. Appellant's eighth point of error is overruled.

Due Process

Appellant contends in his sixth and ninth points of error that he was denied due process of law. Appellant complains that the juvenile court's failure to hold a hearing to determine the voluntariness of his statement denied him due process. Moreover, appellant contends he was denied due process because he was transferred from juvenile to district court. The State urges that appellant's sixth point of error should be overruled, because it has long been the law in Texas that Fifth Amendment concerns are not applicable in a juvenile transfer hearing. Additionally, the State argues that appellant's ninth point of error lacks merit, because the juvenile court is permitted to consider hearsay evidence to determine whether probable cause exists to believe the juvenile committed the offense; therefore, doing so is not a due process violation.

We conclude appellant has failed to preserve error regarding the juvenile court's failure to hold a hearing to determine the admissibility of appellant's statement at the transfer hearing. Appellant failed to object to the trial court's refusal to rule or hold a hearing on his motion to suppress appellant's statement. Appellant failed to notify the juvenile court of his complaint. See Tex.R.App. P. 33.1; see also, *In re E.M.R.*, 55 S.W.3d 712, 716 (Tex.App.- Corpus Christi 2001, no pet.) (holding that appellant failed to preserve his complaint regarding admission of his statement by failing to object at trial on the same grounds as he was complaining on appeal).

To the extent that appellant argues that the juvenile court was required to sua sponte hold a hearing to determine the voluntariness of appellant's complaint, we cannot agree. Section 51.095 of the Texas Family Code speaks towards the evidentiary admissibility of a child's statement, not the court's duty to determine the voluntariness. See Tex. Fam.Code Ann. § 51.095(a) (Vernon Supp.2002). The Court of Criminal Appeals has long held that rights of an accused can be divided into three general categories: fundamental, forfeitable, and those that can be knowingly waived. *Marin v. State*, 851 S.W.2d 275, 279 (Tex.Crim. App.1993) (overruled on other grounds by *Cain v. State*, 947 S.W.2d 262 (Tex.Crim.App.1997)). Admission of a statement made in violation of the Fifth Amendment is one of those forfeitable rights. See *Harris v. State*, 827 S.W.2d 949, 958 (Tex.Crim.App.1992). The plain language of section 51.095 fails to direct the juvenile court to take any action regarding the admissibility of a child's statement absent request by the accused. Tex. Fam.Code Ann. § 51.095 (Vernon Supp.2002). The language of section 51.095 of the family code does not indicate a desire by the legislature to provide more rights to a juvenile offender than to an adult by requiring the court to sua sponte conduct a hearing. Compare Tex. Fam.Code Ann. § 51.095 (Vernon Supp.2002) with Tex.Code Crim. Proc. Ann. art. 38.22 § 6 (Vernon Supp.2002). Article 38.22 section 6 of the Texas Code of Criminal Procedure requires a trial court to conduct a hearing to determine voluntariness only where a question as to voluntariness is raised. Finally, appellant fails to cite this Court to any authority to support his position that to comport with due process requirements a juvenile court must hold a hearing to determine voluntariness sua sponte. We overrule appellant's sixth point of error.

Appellant additionally complains he was denied due process, because the juvenile court considered inadmissible hearsay evidence to determine that probable cause existed to believe appellant committed the alleged offense. We have already concluded that the juvenile court properly considered the testimony of the detective and probation officer. Appellant's due process argument is meritless.

The juvenile court fully complied with all procedural protections guaranteed to appellant during the discretionary transfer hearing. Appellant was not entitled to the full protections afforded him in a criminal trial. See *Lanes v. State*, 767 S.W.2d 789, 793-94 (Tex.Crim.App.1989) (delineating specific rights applicable to juvenile proceedings). Appellant was not denied due process entitled to him at his transfer hearing. Appellant's ninth point of error is overruled.

Ineffective Assistance

In points of error two, four, seven, and ten through fifteen, appellant argues he was denied effective assistance of counsel during his juvenile transfer hearing and criminal trial, including punishment. Appellant first complains of his juvenile counsel's failure to object to the fullness of the investigation and admission of hearsay evidence during his transfer hearing. Next, appellant argues his trial counsel was ineffective, because he failed to seek suppression of appellant's statement and incriminating scientific evidence. Appellant claims that trial counsel's representation at punishment was ineffective, because counsel failed to object to evidence of appellant's gang affiliation and the State's improper jury argument. Finally, appellant asserts that the totality of trial counsel's representation constituted ineffective assistance. The State argues appellant's counsel was effective at all stages of appellant's transfer hearing, trial and punishment.

We evaluate the effectiveness of counsel under the standard enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). *Hernandez v. State*, 726 S.W.2d 53, 56-57 (Tex.Crim.App.1986); *Hernandez v. State*, 988 S.W.2d 770, 770 (Tex.Crim.App.1999). To prevail on an ineffective assistance of counsel claim, an appellant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for trial counsel's errors, the result would have been different. *Strickland*, 466 U.S. at 687-88, 694. The record must be sufficiently developed to overcome a strong presumption that counsel provided reasonable assistance. *Thompson v. State*, 9 S.W.3d 808, 813-14 (Tex.Crim.App.1999). An appellate court looks to the totality of the representation and the particular circumstances of each case in evaluating the effectiveness of counsel. *Id.* at 813. We evaluate appellant's complaints in light of these standards.

Juvenile Waiver and Transfer Hearing

Appellant argues in his second and fourth points of error that during his juvenile transfer hearing, his counsel was ineffective for failing to object to the juvenile court's failure to conduct a full investigation and erroneously admitted hearsay statements contained in the diagnostic study and social evaluation. In his seventh point of error, appellant argues the totality of counsel's representation at the juvenile transfer hearing was ineffective, because he waived error regarding admission of appellant's statement. The State contends the trial counsel's representation was not ineffective. We agree with the State.

We have already concluded the trial court conducted a full investigation of appellant, his circumstances, and the circumstances of the alleged offense; therefore, appellant cannot demonstrate that counsel's performance was deficient for failing to object to the completeness of the investigation. Additionally, having already concluded that the juvenile court was permitted to consider the statements of the detective and probation officer in the transfer hearing, the record fails to provide a basis for the conclusion that trial counsel's failure to object to admissible evidence constituted ineffective assistance. See *Lee v. State*, 29 S.W.3d 570, 579-80 (Tex.App.-Dallas 2000, no pet.). We overrule appellant's second and fourth points of error.

In his seventh point of error, appellant complains the totality of counsel's representation was ineffective specifically because his counsel failed to obtain a ruling on his motion to suppress his own statement. Appellant did not file a motion for new trial or present any evidence which demonstrates that the requirements of section 51.095 of the family code have not been met. Absent a showing that counsel's objection would have excluded appellant's statement, appellant cannot demonstrate the outcome of the proceeding would have been different. Accordingly, we overrule appellant's seventh point of error.

Credit of Time Served in Juvenile Detention

In his final point of error, appellant argues the trial court failed to credit him for time served between his arrest and the juvenile transfer. Appellant argues he is entitled to credit for the period of detention beginning April 20, 2000, and ending April 4, 2001, in addition to the time awarded in the judgment, "04/5/01 to 5/16/01." The State concedes that appellant's judgment should be reformed to reflect credit for time served beginning April 20, 2000, and ending May 16, 2001. Appellant's sixteenth point of error is sustained. Accordingly, we reform the judgment to read the appellant will receive credit for time served from April 20, 2000, until May 16, 2001.